

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DONTE L. HOBBS,	:	NO. 1:09-CV-00725
	:	
	:	
Petitioner,	:	
	:	OPINION AND ORDER
v.	:	
	:	
WARDEN, WARREN CORRECTIONAL	:	
INSTITUTION,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's October 1, 2010 Report and Recommendation (doc. 15), to which no objection has been filed. For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation, and DISMISSES this matter from the Court's docket.

On October 5, 2009, Petitioner petitioned the Court for a Writ of Habeas Corpus, pursuant to 28 U.S.C. §2254 (doc. 1). After a thorough review of the facts and the law, the Magistrate Judge found that Petitioner's petition for writ of habeas corpus should be denied (doc. 15). The Magistrate Judge specifically found that Petitioner's first ground of his Petition, which challenges the consecutive sentences the court imposed in his case, should be dismissed because Petitioner's allegations do not state a constitutional claim subject to review in this proceeding (*Id.*). The Magistrate Judge further found relief inappropriate under

grounds two and three of the Petition, claims for ineffective assistance of counsel and insufficient evidence, as both grounds were waived when Petitioner failed to present such claims to the Ohio Supreme Court for consideration (Id.).

Proper notice was provided to the Parties under Title 28 U.S.C. § 636(b)(1)(C), including the notice that they would waive further appeal if they failed to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Petitioner, as noted above, filed no objection.

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court concludes that the Magistrate Judge's Report and Recommendation is well-reasoned, thorough, and correct. Accordingly, the Court GRANTS Respondent's Motion to Dismiss (doc. 9), and DISMISSES WITH PREJUDICE Petitioner's Petition for a Writ of Habeas Corpus (doc. 1). The Court further FINDS that a certificate of appealability should not issue with respect to the claims alleged in grounds two and three in Petitioner's petition because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" under the first prong of the applicable two-part standard enunciated in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). The Court similarly finds that no certificate of appealability should issue with respect to the claim alleged in ground one of the Petition, which the Magistrate Judge

addressed on the merits, as Petitioner has made no substantial showing that he has stated a viable claim of the denial of a constitutional right. Finally, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that with respect to any application by Petitioner to proceed on appeal in forma pauperis, an appeal of this Order would not be taken in "good faith" and therefore the Court DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: October 21, 2010

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge